Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

COMMENTS OF THE SUPPORTERS OF THE MISSOULA PLAN

October 25, 2006

TABLE OF CONTENTS

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The undersigned supporters of the Missoula Plan submit these Comments pursuant to the Public Notice (DA 06-1730) released by the Commission in this proceeding on August 29, 2006.[1] The Missoula Plan is a remarkable accomplishment. It is the result of years of industry collaboration and negotiation, and is supported by a diverse group of carriers, representing virtually the entire spectrum of the telecommunications industry, including BOCs, CLECs, IXCs, mid-sized ILECs, CMRS carriers, and rural ILECs. The Missoula Plan resolves a vast array of issues that have plagued carriers for decades in their efforts to interconnect with one another, pay each other for the use of their networks to originate or terminate traffic, and provide universal service to their customers. It comprehensively addresses the myriad interrelationships among and between intercarrier payments, network interconnection, and certain components of universal service that make up the current system of "intercarrier compensation." No other intercarrier compensation reform plan currently before the Commission in this or any other proceeding has as broad a base of support as the Missoula Plan or reforms intercarrier compensation as comprehensively or in as coordinated a fashion as the Missoula Plan. At its

[1] The Missoula Plan for comprehensive intercarrier compensation reform was filed with the Commission on July 24, 2006, by the National Association of Regulatory Utility Commissioners ("NARUC"). *See* Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications; Ray Baum, Commissioner and Chair, NARUC Task Force on Intercarrier Compensation; and Larry Landis, Commissioner and Chair, NARUC Task Force on Intercarrier Compensation, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket Nos. 01-92, *et. al.* (July 24, 2006)("NARUC Letter"). The supporters of the Missoula Plan are: AT&T Inc., BellSouth Corporation, Cingular Wireless LLC, Commonwealth Telephone Co., Consolidated Communications, Embarq Corporation, Epic Touch, Co., Global Crossing North America, Inc., Iowa Telecommunications Services, Inc., Level 3 Communications, LLC, Madison River Communications Corporation, the Rural Alliance, and Windstream Corporation.

core, the Missoula Plan is designed to transition the current dysfunctional system of intercarrier payments based on *ad hoc* and arbitrary distinctions to a system based largely on rational, competitively neutral principles. The main beneficiaries of that transition will be consumers. We urge the Commission to adopt the Missoula Plan without modification or delay.

I. INTRODUCTION AND SUMMARY

There is widespread agreement—in multiple ongoing Commission proceedings—that the system of intercarrier compensation urgently needs reform.[2] The access charge and reciprocal compensation systems of intercarrier payments have evolved over decades, occasionally in parallel, but rarely in an integrated fashion. Changes and modifications to each system often have been implemented piecemeal, in response to discrete concerns.[3] As a result, the industry,

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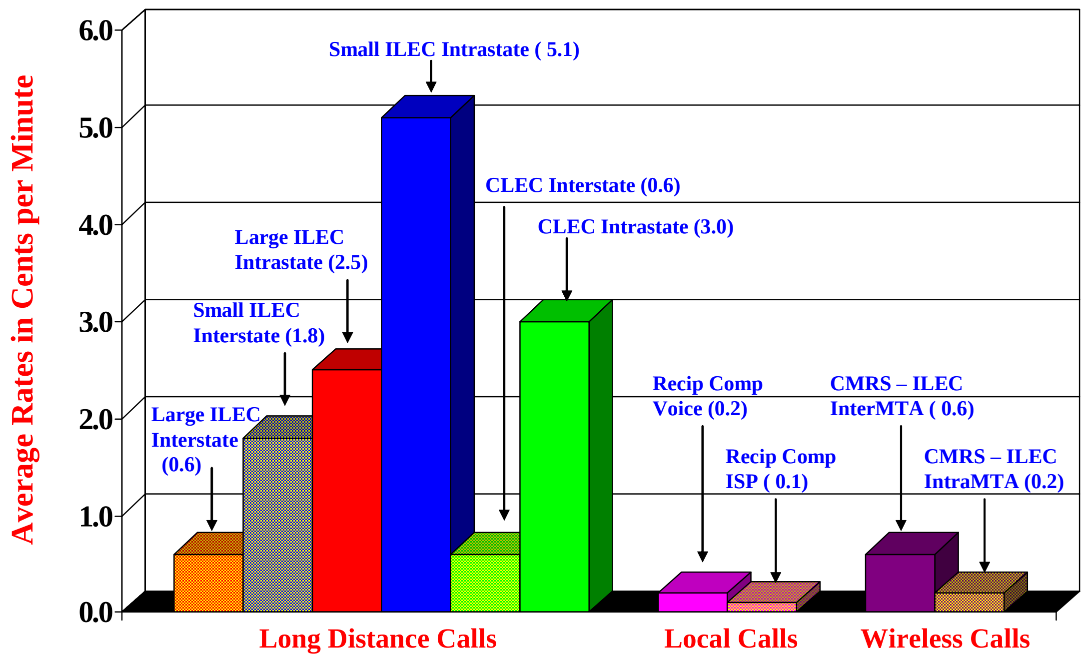
[2] In this proceeding, *see, e.g., CompTel/ALTS Comments* at 4 ("the need for reform [is] undisputed[.]"); *Frontier Comments* at 2 ("There is no controversy over this conclusion and Frontier likewise concurs that comprehensive reform is badly needed."); *NCTA Comments* at 1 ("The need for reform is undeniable."); *Nextel Partners Comments* at 1 ("Nextel Partners recognize the need to replace the existing intercarrier compensation regimes with a unified regime."); *NTCA Comments* at i ("NTCA agrees that the time has come to reform the complex web of rules that govern the manner in which carriers compensate or fail to compensate each other for access, termination and transport."); *NuVox Comments* at 1 ("Rationalization of current intercarrier compensation is critical to the continued development of competition."); *Qwest Comments* at 1 ("The entire [intercarrier compensation] system is fatally flawed."); *T-Mobile Comments* at i ("Today's intercarrier compensation and universal service regimes are broken, harm consumers and need immediate fundamental repair."); *see also,* in *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Rate Regulation Pursuant to § 251(g) and for Forbearance from the Rate Averaging and Integration Regulation Pursuant to § 254 (g)* (WC Docket No. 06-100), *Qwest Comments* at 4 ("[T]he existing regulatory structure governing intercarrier compensation is in desperate need of a massive overhaul[.]"); *Sprint Nextel Comments* at 2 ("[T]he existing agglomeration of intercarrier compensation mechanisms is irreparably dysfunctional[.]"); *Western Telecommunications Alliance Comments* at 2 ("[R]evision and rationalization of the existing intercarrier compensation [system] is necessary[.]");*see also,* in *IP-Enabled Services* (04-36), *ALTS Comments* at 13 ("To be sure, the development of IP-enabled services, especially VoIP services, has once again illustrated the need to reform the existing intercarrier compensation regime.").

[3] *See, e.g., CTIA Comments* at I ("The current intercarrier compensation and universal service regimes are a patchwork of policies and rules that may have been individually justifiable at some point, but have over time become inconsistent, anticompetitive, and increasingly irrational and irrelevant to today's multi-dimensional telecommunications market.").

the Commission, the states, and the courts have been called on time and time again to determine when access charges apply, when reciprocal compensation applies, whether there are circumstances where neither applies, and what the rates for such services should be. Such questions frequently have been addressed based on the carriers involved, the technology involved, the geography involved, or a combination of such factors. Such *ad hoc* implementation has produced a hodgepodge of intercarrier payment rules, and the resulting kaleidoscope of disparate rates for intercarrier payments leaves no doubt that the current intercarrier compensation system is broken.[4]

THE CURRENT INTERCARRIER COMPENSATION SYSTEM IS BROKEN



High (¢/min):	1.5	8.9	9.9	34.9	6.8	35.9	0.3	0.1	8.9	0.3
Low (¢/min):	0.5	0.3	0.4	0.7	0.2	0.4	0.0	0.0	0.2	0.0

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[4] *See* Rosenberg, Pérez-Chavolla, and Liu, *Commissioner Briefing Paper: Intercarrier Compensation and the Missoula Plan* at 1 (National Regulatory Research Institute, October 2006)("Intercarrier compensation, the payments telecommunications carriers make to each other for the costs of starting and ending telephone calls, is today a Byzantine, unfair concatenation cobbled together out of outdated policy rationales. . . .Many observers believe the system is broken and will become more so as more voice traffic originates or terminates on wireless or Internet Protocol (IP) networks.")("NRRI Report"). Available at http://www.nrri.ohio-state.edu/dspace/bitstream/2068/1039/1/06-14+Intercarrier+Compensation+and+the+Missoula+Plan.pdf.

It is no wonder that such a system has encouraged carriers to manipulate the interstices in the rules for intercarrier payments in order to gain a competitive advantage.[5] Disputes of this nature have consumed the industry for years; indeed many such disputes remain pending before the Commission, new proceedings continue to be initiated as additional disputes arise, and new schemes continue to be devised by carriers seeking to game the system. No one believes that either the public or the industry benefits from this regulatory morass.

There also is near universal agreement that reform must be comprehensive, and that merely eliminating or reducing one form of intercarrier compensation will not serve consumers, carriers, or the public interest generally. The current "intercarrier compensation" system is comprised of much more than merely rules that spell out—or fail to spell out—when carriers pay each other access charges or reciprocal compensation. It is a Rube Goldberg patchwork of intercarrier payment, interconnection, and universal service obligations that have been established over decades, often without regard to the relationships between such concerns. The highly interrelated nature of these issues demands a comprehensive solution that implements reform in a coherent, coordinated manner.

Comprehensive reform is imperative. It is imperative not merely because of the logical and practical interrelationships between intercarrier payment issues, network interconnection issues, and universal service issues, but also to ensure that the nation's "intercarrier compensation" system facilitates, rather than impedes, the transition from *yesterday's* one-wire, narrowband world, to *today's* intermodal, competitive, and increasingly broadband-powered

[5] *See, e.g.,* Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 16 FCC Rcd. 9151, CC Docket No. 99-68 ¶ 2 (rel. April 27, 2001)("ISP Remand Order")("There is convincing evidence in the record that some companies have targeted ISPs as customers merely to take advantage of these intercarrier payments."), *remanded, WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003); *see also NRRI Report* at 1 ("Companies have been inventive in their methods of gaming the system, using arbitrage to artificially change how their costs are charged at the expense of others."). *See also* Petition for Declaratory Ruling that VarTec Telecom, Inc. is Not Required to Pay Access Charges to Southwestern Bell Telephone Company or Other Terminating Local Exchange Carriers When Enhanced Service Providers or Other Carriers Deliver Calls to Southwestern Bell Telephone Company or Other Local Exchange Carriers for Termination, WC Docket No. 05-276.

communications environment, and to cultivate the entrepreneurial drive and imagination needed to usher in the marketplace of *tomorrow*. Consistent with the avowed policy mandate of the Commission, Congress, and the President, the Commission must eliminate artificial regulatory barriers obstructing the transition to the new world of broadband and advanced services. The Commission will best promote that mandate by adopting the Missoula Plan.

II. ADOPTION OF THE MISSOULA PLAN WILL PROVIDE A COMPREHENSIVE SOLUTION TO INTERCARRIER COMPENSATION

Since the inception of this proceeding in 2001, very few parties have submitted actual plans for intercarrier compensation reform. A few parties have submitted broad conceptual proposals or lists of public policy considerations. Most seem content not to offer any constructive suggestions of their own for comprehensive reform, but to assail proposals offered by others. Such assaults, moreover, invariably focus on discrete aspects of intercarrier compensation that impact the parochial interests of a particular carrier or class of carrier.

In contrast, the Missoula Plan is a comprehensive solution to intercarrier compensation reform. It addresses intercarrier payments, network interconnection, and the provision of universal service in a coordinated fashion.[6] The Missoula Plan does not advance the individual interests or policy positions of any particular company or class of carriers. It addresses the interests of all network users and all classes of communications consumers and accommodates new technologies and different network architectures through a comprehensive and coordinated proposal that will achieve all of the Commission's objectives for reform. The Missoula Plan strikes a balance between technical, financial, and public policy interests, and distinguishes itself from proposals designed to promote the parochial interests of individual companies, classes of carriers, or other interests.

In developing the Missoula Plan, each participant made compromises to achieve a global solution that would work for consumers and the industry as a whole, not just themselves or one

[6] There are three implementation provisions for which the supporters of the Missoula Plan have proposed alternative provisions. *See* Missoula Plan § III.B.2.f and Appendix A to the July 24, 2006, Missoula Plan filing.

narrow industry segment. Accordingly, in evaluating the Missoula Plan, the Commission should not now pick and choose among the plan's constituent parts and assume that such piecemeal action would be lawful, sensible, or supported by the Plan's sponsors. The Commission should reject the myopic efforts of some parties to focus on whether a particular provision or provisions of the plan satisfies the desires of one constituency or another on a particular issue or issues. Rather, the question that the Commission must address is whether, as a whole, the Missoula Plan is the best overall solution for comprehensive intercarrier compensation reform.

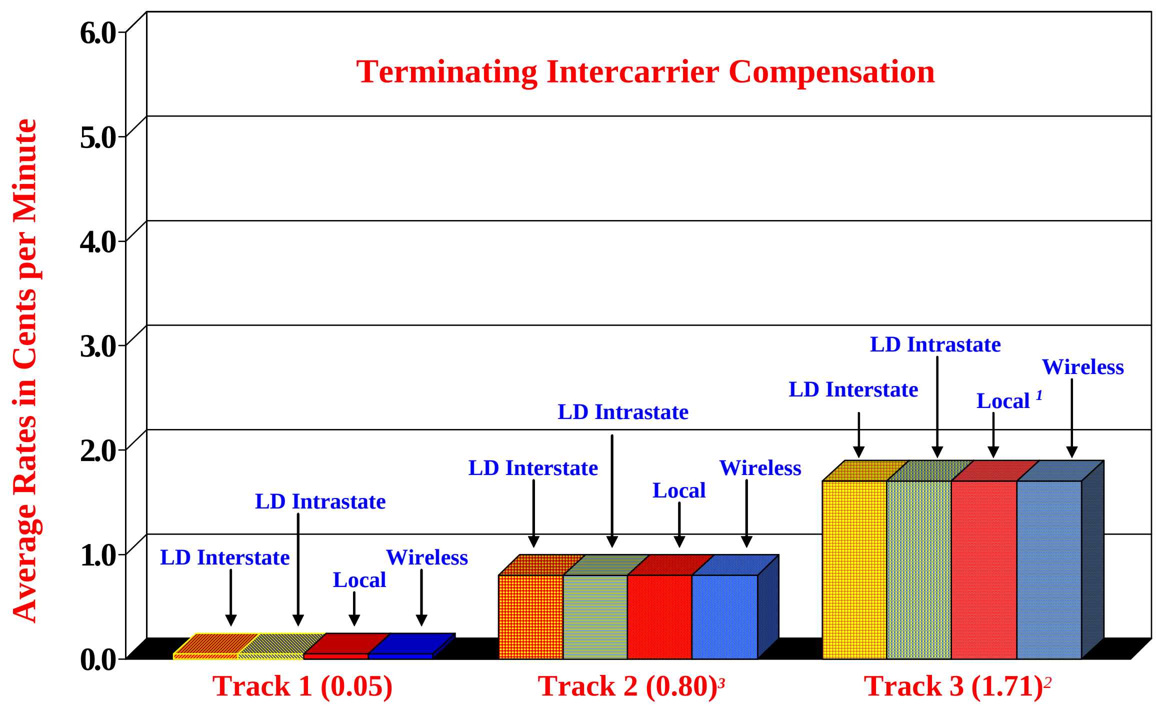
The details of the Missoula Plan are set forth in the documents filed by NARUC with the Commission on July 24, 2006. In summary, however, the Missoula Plan:

- Establishes comprehensive rules for intercarrier payments for all traffic, including VoIP-PSTN and PSTN-VoIP traffic, VNXX traffic, intraMTA traffic, and other traffic that has been the subject of intractable industry disputes for years;
- unifies intercarrier charges for the majority of the nation's lines and moves all intercarrier rates for all traffic closer together;
- provides alternative sources for recovery through increases in caps for federal SLCs and a new Restructure Mechanism;
- establishes uniform default interconnection rules based on carrier network Edges;
- establishes rules for the provision of tandem transit services;
- establishes an interim and long term solution to phantom traffic;
- provides additional funding to insulate Lifeline customers from potential SLC increases; establishes an Early Adopter Fund, and increases certain high cost funding; and
- creates an incentive regulation option for qualifying rate of return carriers.

No other proposal before the Commission addresses intercarrier compensation as a whole, in a coordinated fashion, as does the Missoula Plan.

With respect to intercarrier payments specifically, while acknowledging differences among carriers through the establishment of three carrier "Tracks," the Missoula Plan substantially reduces per-minute access and reciprocal compensation charges imposed on long distance or other intercarrier calls, unifies intercarrier charges for the majority of lines, and moves all intercarrier rates charged for all traffic—traffic exchanged pursuant to § 251(b)(5) compensation rules, transit traffic, ISP-bound traffic, and traffic exchanged under intrastate and interstate access tariffs—closer together. Thus, the Missoula Plan repairs today's broken intercarrier payment system.

THE MISSOULA PLAN REPAIRS THE BROKEN INTERCARRIER COMPENSATION SYSTEM



1. Compensation for EAS traffic remains under existing arrangements.
2. Reciprocal compensation rates capped at interstate access rate levels. Access traffic capped at interstate access rate levels. Reflects average interstate access rates for Track 3 carriers for illustrative purposes. Actual rates may vary by carrier.
3. Assumes end office switching rate of 0.05 (same as Track 1 rate) and 0.75 for common transport and tandem switching.

In addition to establishing rates for intercarrier payments, the Missoula Plan contains four provisions designed to eliminate disputes concerning intercarrier compensation obligations until rates are unified. First, the Plan establishes rules dictating which types of compensation shall be due, and to which carriers, in various situations, *e.g.*, for VoIP-PSTN, PSTN-VoIP, intraMTA wireline-CMRS traffic, VNXX traffic, and ISP-bound traffic, and thus resolves some of the most contentious intercarrier payment issues that have consumed the industry, regulatory bodies, and the courts over the last several years.[7] Second, the Missoula Plan establishes rules to facilitate negotiation of interconnection agreements for all carriers. Third, the Missoula Plan contains several "out of balance" safeguards for non-access traffic. Finally, as a comprehensive solution to the issue of "phantom traffic," the Missoula Plan requires carriers to provide signaling and call detail information to facilitate call identification and proper application of intercarrier compensation charges.[8] These four provisions, in conjunction with the setting of specific rates and rate caps, comprehensively transition the current dysfunctional system of intercarrier payments based on *ad hoc* and arbitrary distinctions to a system based largely on rational, competitively neutral principles.

Reform also must address network interconnection issues, which also have been a source of prolonged and protracted regulatory battles since the Act was passed in 1996.[9] It is simply not

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[7] *See, e.g., Verizon California, Inc. v. Peevey,* __ F.3d __, 2006 WL 2563879 (9th Cir. 2006)(intercarrier payments for VNXX traffic); *Global NAPS, Inc. v. Verizon New England, Inc.*, 454 F.3d 91 (2d Cir. 2006)(intercarrier payments for VNXX traffic); *Verizon North, Inc. v. Telnet Worldwide, Inc., et. al.*, 440 F.Supp. 700 (W.D. Mich. 2006)(intercarrier payments for VNXX traffic); *Qwest Corp. v. Universal Telecom, Inc.*, 2004 WL 2958421 (D. Or. 2006)(intercarrier payments for VNXX traffic); *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256 (10th Cir. 2005)(intercarrier payments for intraMTA wireline-CMRS traffic).

[8] In addition to the call signaling rules established in the Plan, the Missoula Plan requires the submission of an industry proposal for a uniform process for the creation and distribution of call detail records and an interim proposal for the distribution of call summary information. *See* § V of the Missoula Plan. The Missoula Plan supporters have been diligently working to complete such proposals and anticipate that they will be filed with the Commission shortly.

[9] *See, e.g.,* Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order*, 15 FCC Rcd. 18354, CC Docket No. 00-65 ¶ 78 (rel. June 30, 2000); Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey, *Memorandum Opinion and Order*, 17 FCC Rcd. 12275, WC Docket No. 02-67 ¶ 155 (rel. June 24, 2002); Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, *Memorandum Opinion and Order*, 17 FCC Rcd. 27,039 CC Docket No. ¶ 118 (rel. July 17, 2002) ("*Virginia Arbitration*

possible to define compensation obligations without also defining where and how carriers interconnect and the length and scope of the transport that each carrier is obligated to provide. Rules delineating network interconnection responsibilities—including financial responsibility for transport—are a primary factor in determining the costs a carrier must incur to receive traffic from and deliver traffic to other carriers. Any lack of uniformity in interconnection rules, or failure to coordinate such rules with intercarrier payment reform will have profound economic impacts that will impede efficient competition and harm consumer welfare. The Missoula Plan is the only proposal in this proceeding that provides, in any meaningful detail, a solution to network interconnection disputes. The Missoula Plan also is the only proposal that—in conjunction with its network interconnection provisions—offers a compromise solution to the provision of transit services, another issue that has resulted in protracted litigation in the industry.[10] Most other proposals either ignore or defer resolution of this critical set of issues, thereby indefinitely encouraging the types of regulatory gamesmanship that has undermined and will continue to undermine the stability that intercarrier compensation reform is supposed to

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Order"); Level 3 Communications, Inc. LLC v. Qwest Corp., Iowa Utils. Bd. ARB-05-4, *Order on Reconsideration*, 2006 WL 206785 at 2 -5 (issued July 19, 2006)("Iowa Recon. Order"); Petition of the CLEC Coalition for Arbitration Against Southwestern Bell Telephone Company, L.P. d/b/a SBC Kansas under Section 252(b) of the Telecommunications Act of 1996, Kansas State Corp. Comm. 05-BTKT-365-ARB, *Arbitrator's Determination of Issues,* 2005 WL 4396237 ¶ 326, *et. seq.* (Feb. 16, 2005); *MCIMetro Access Transmission Svcs., Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4th Cir. 2003); *US West Communications, Inc. v. Jennings*, 304 F.3d 950 (9th Cir. 2002); *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3rd Cir. 2001); *US West Communications v. MFS Intelnet, Inc.*, 193 F.3d 1112 (9th Cir. 1999). Such disputes have centered not only on the rules for physical connections between networks, but also financial responsibility for the transport associated with such interconnection. *See, e.g., Iowa Recon. Order* at 5-10; Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ligonier Telephone Company, Inc., *Order,* Ind. U.R.C. 43052-INT-01, 2006 WL 2663730 at 23-26 (Sept. 6, 2006); Cellco Partnership dba Verizon Wireless, *Order of Arbitration Award,* Tenn. R.A. Docket No. 03-00585, 2006 WL 707481 (Jan. 12, 2006); *Verizon North Inc. v. Telnet Worldwide, Inc.*, 440 F.Supp.2d 700 (W.D. Mich. 2006); *Qwest Corp. v. Universal Telecom, Inc.*, 2004 WL 2958421 (D. Or. 2004); *Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[10] *See, e.g., Virginia Arbitration Order* ¶¶ 107-121.

achieve. The Missoula Plan's interconnection rules are a hallmark of and testament to its comprehensive approach to intercarrier compensation reform.

III. THE MISSOULA PLAN WILL PRODUCE SUBSTANTIAL PUBLIC BENEFITS

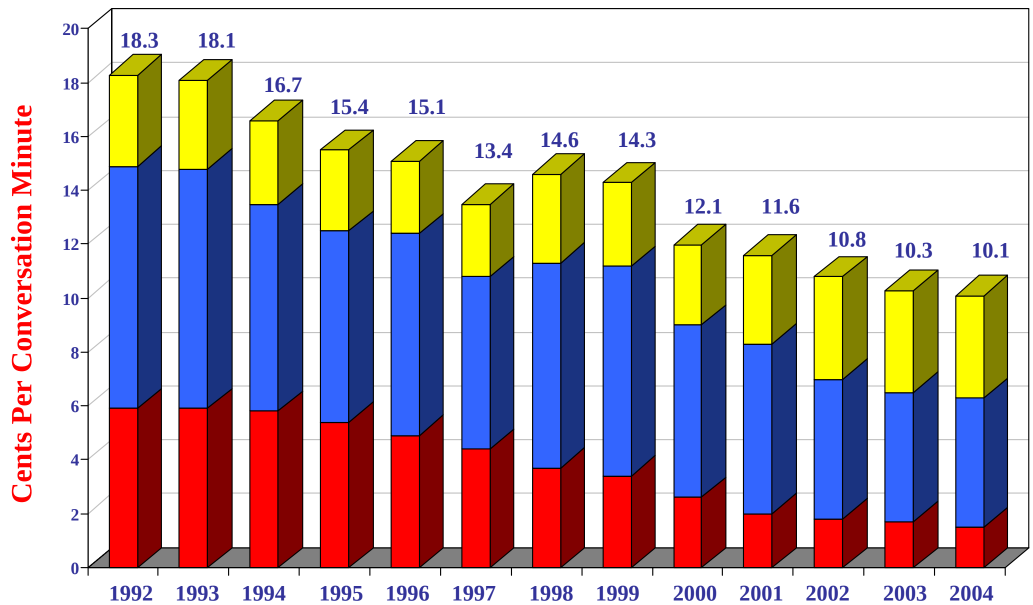
Today's intercarrier compensation system, and, in particular, the jumble of rules governing intercarrier payments, is inefficient, dampens and distorts investment incentives, and places obstacles in the path of carriers responding to the competitive imperatives of a new market. These drags on efficiency and competitiveness impose distortions in the marketplace that inevitably impede the development of competition and thus prevent consumers from reaping the benefits of competition. By reducing artificial distinctions and shifting a portion of interconnection revenues from usage based intercarrier payments to a combination of modestly higher subscriber line charges and a new revenue recovery mechanism, the Missoula Plan will:

- minimize rate differences between regulatory jurisdictions and services and thus reduce arbitrage opportunities;
- afford opportunities to recover revenues lost as usage based intercarrier rates are reduced, in order to preserve and promote the network investment necessary to ensure that consumers in rural areas remain able to obtain basic and advanced services that are comparable to those provided in urban areas, maintain investment in infrastructure that supports not only incumbent wireline services but also wireless, IP, and other services that use incumbent networks, and promote the continued provision of universal service at affordable rates;
- establish mechanisms and processes to maintain equity between states that have already undertaken intercarrier compensation reform and those that have not;
- resolve many issues and disputes that have consumed and continue to consume enormous private and public resources;
- reduce artificial suppression of demand caused by the current intercarrier compensation system;
- enhance consumer choice; and
- foster investment and technological innovation, especially in the deployment of broadband-enabled services.

In short, adoption of the Missoula Plan will produce enormous public benefits.

Consumers will be the Plan's main beneficiaries, both in the short term and in the longer term. Previous reforms of rates for intercarrier payments have resulted in dramatic reductions in consumer retail rates.

HISTORY PROVES CONSUMERS BENEFIT FROM INTERCARRIER PAYMENT REFORM



	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
SLC Revenue *	3.4	3.3	3.1	3.0	2.7	2.7	3.3	3.1	3.0	3.3	3.8	3.8	3.8
Revenue Net Access & USF *	9.0	8.9	7.7	7.1	7.5	6.4	7.6	7.8	6.4	6.3	5.2	4.8	4.8
Access & USF Expense *	5.9	5.9	5.8	5.4	4.9	4.4	3.7	3.4	2.6	2.0	1.8	1.7	1.5

* Cents Per Conversation Minute

Similarly, the Missoula Plan will increase wireline consumer welfare by unifying or compressing disparate levels of per-minute access charges and replacing any associated revenue losses with increases in flat per-month charges. An economic study commissioned by AT&T demonstrates that the cumulative consumer welfare benefits of the Missoula Plan over its eight year term will improve measurable aspects of consumer welfare by more than $40 billion.[11]

In the longer run, the Missoula Plan's rationalized pricing and decreased administrative costs will increase incentives for investment and will facilitate more innovative offerings, all of which should result in further rate decreases and further gains in consumer welfare over time.

[11] *See* Richard N. Clarke and Thomas J. Makarewicz, *Economic Benefits from Missoula Plan Reform of Intercarrier Compensation* (July 18, 2006)(attached to *NARUC Letter*).

By merging the rates between regulatory jurisdictions and between service types (*e.g.,* wireline vs. wireless, interstate vs. intrastate, and VoIP vs. circuit switched telephony), the Missoula Plan will minimize arbitrage opportunities and competitive distortions, facilitate the provision of bundled all-you-can-eat services and increased local calling areas, and productively focus carriers' attention on competing to sell consumers better and cheaper services rather than on exploiting or closing regulatory loopholes. The Plan will aid rural customers by ensuring long-term, predictable revenues to allow rural carriers to build and maintain networks to provide basic and advanced services to the consumers they serve. And, by reducing the reliance on switched access charges under the current intercarrier compensation structure to recover the cost of service provided by rural carriers, the Plan will remove the claim by some carriers that rural access charge levels create a regulatory disincentive to their provision of new and competitive services in rural areas.

The Missoula Plan also will increase regulatory certainty and reduce administrative and litigation costs throughout the industry. The harmonization of pricing for intercarrier payments, and the establishment of an easily administrable regime of interconnection rules will halt a vast range of intercarrier disputes and litigation. Indeed, adoption of the Missoula Plan would resolve several disputes currently pending before the Commission, including questions such as whether CMRS carriers must interconnect directly with competitive transit service providers (CC Docket No. 06-159); whether carriers other than ILECs may be included in the arbitration and negotiation process under § 252 (CC Docket No. 01-92, on reconsideration of the Commission's order No. FCC 05-42); whether access charges or reciprocal compensation rates apply to VoIP-PSTN traffic (WC Docket Nos. 04-36 and 05-283); whether a carrier may designate different rating and routing points when interconnecting with another carrier (CC Docket No. 01-92); whether ISP-bound traffic is subject to reciprocal compensation (CC Docket No. 99-68, on remand from the D.C. Circuit), to name just a few. The corresponding certainty will substantially reduce carriers' administrative costs, reduce the number of intercarrier compensation issues raised in § 252 arbitrations, create a more stable regulatory environment that fosters additional investment, and generate far greater gains in consumer welfare than any other proposal for intercarrier compensation reform currently before the Commission.

In various public presentations and state workshops, some parties already have begun to raise misleading allegations about the Missoula Plan, including claims that the Missoula Plan fails to address VoIP traffic or the rights and obligations of VoIP providers, forces carriers to renegotiate all of their current interconnection agreements and replace all of their current interconnection arrangements, eliminates a competitor's right to interconnect at single point of interconnection, fails to include any provisions restricting arbitrage opportunities, will lead to telephone number exhaust, and will allow incumbents to double recover their transport costs. None of those claims are true. The supporters of the Missoula Plan welcome public debate about the merits of the Missoula Plan. Indeed, subsequent to the filing of the Plan, its supporters have engaged in substantial outreach efforts with industry groups and regulatory bodies, and have endeavored to accommodate, where possible, the concerns of such parties in order to encourage them to support the Plan. And, in response to legitimate concerns, the supporters of the Missoula Plan have made some clarifications and corrections to specific provisions of the Plan, as well as some substantive changes to the Plan.[12] As a result of such changes, Embarq and Windstream now also support the Missoula Plan. The Commission, however, should not be influenced by scare tactics, based on speculation or misleading claims, that are intended to derail discussion of the Missoula Plan rather than encourage honest consideration of its merits. Rather, the Commission should remain focused on the fact that no other proposal for intercarrier compensation reform is as comprehensive as the Missoula Plan, has as broad a base of support as the Missoula Plan, or will produce as much public benefit as the Missoula Plan.

[12] Such clarifications and revisions are set forth in detail in Attachment A.

IV. THE COMMISSION HAS AMPLE LEGAL AUTHORITY TO ADOPT ALL OF THE COMPONENTS OF THE MISSOULA PLAN

Just as the current system of "intercarrier compensation" is an assemblage of various interrelated components, including intercarrier payments, network interconnection, and universal service, various provisions of the Act provide the Commission jurisdictional and substantive legal authority over each of those components. In total, those provisions endow the Commission with ample legal authority to adopt the Missoula Plan as a comprehensive reform of the intercarrier compensation system.[13] The Missoula Plan is designed to be implemented by the Commission and the states as a coordinated and cooperative effort. The Commission plainly has authority under the Act to implement directly those portions of the Missoula Plan designed to be implemented by the Commission as well as to adopt the incentives designed to encourage state participation in the portions of the Missoula Plan designed to be implemented by the states.[14]

A. The Commission Has Authority to Adopt the Provisions of the Missoula Plan Designed to be Implemented by the Commission Directly

1. Interconnection Rules

The Commission may plainly mandate the Missoula Plan's approach to carrier interconnection. It is beyond cavil that §§ 201 and 251 of the Act plainly allow the Commission to adopt rules governing the interconnection rights and responsibilities of all carriers.[15] Section 201(a) empowers the Commission to issue orders requiring carriers "to establish physical

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[13] All the supporters of the Missoula Plan agree that the Commission has the authority under the Act to adopt the provisions of the Missoula Plan establishing alternative sources of recovery for revenue displaced through reduction in intercarrier payment rates. Various supporters of the Missoula Plan, however, endorse different theories in support of such authority. Such theories are set forth in Attachments B and C.

[14] Analysis of the Commission's authority to adopt the Missoula Plan was included in the July 24, 2006, Missoula Plan documentation filed with the Commission by NARUC. *See The Missoula Plan: Policy and Legal Overview* at 4-8 and Attachment A ("Missoula Plan Legal Discussion"). The *Missoula Plan Legal Discussion* is incorporated in these Comments by reference.

[15] 47 U.S.C §§ 201 and 251.

connections with other carriers."[16] Thus, the Commission "has on many occasions ordered . . . interconnection among carriers," and in so doing has "specif[ied] the types of facilities which the interconnecting carrier or carriers must provide."[17] Section 201(b) also permits the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [U.S.C. Title 47, Chapter 5],"[18] which includes §§ 251(a) and (c), and the Supreme Court has made clear that "the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the 'provisions of [this chapter.]'"[19] Section 251(a) requires all carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers,"[20] and § 251(c) requires ILECs to provide "interconnection . . . for the transmission and routing of telephone exchange service and exchange access . . . at any technically feasible point within the carrier's network."[21] Thus, there is no doubt that the Commission has rulemaking authority over all issues pertaining to the interconnection of telecommunications networks.

2. Signaling Rules and Rules Establishing a Uniform Basis for Determining Applicable Intercarrier Payment Rates (Phone Numbers)

The Missoula Plan's provisions imposing various signaling obligations fall squarely within the Commission's authority to adopt rules establishing criteria for the determination of the proper jurisdiction of traffic, including the diverse types of traffic that fall within the scope of the Commission's rulemaking authority under §§ 201 and 251 and the principles of *Iowa Utilities Board*. In that respect, the signaling requirements resemble the Commission's well-established

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[16] 47 U.S.C. § 201(a).

[17] American Telephone & Telegraph Co., *Notice of Inquiry and Proposed Rulemaking*, 84 F.C.C.2d 1, Docket No. 21499 ¶ 9 (rel. Jan. 19, 1981).

[18] 47 U.S.C. § 201(b).

[19] *AT&T Corp. v. Iowa Utils Bd.* 525 U.S. 366, 377-86 (1999).

[20] 47 U.S.C § 251(a).

[21] *Id.* § 251(c).

ARMIS rules, which similarly require carriers to classify, record, and report information based on interstate as well as intrastate classifications in order to ensure proper accounting and recovery.[22]

For the same reasons, the Commission has full authority to implement the Plan's rules regarding the jurisdictionalization of traffic for compensation purposes by, for example, relying on telephone numbers as proxies for the locations of each end of a call.[23] While the Commission has determined that geography is the basis for jurisdictionalizing traffic, it also has relied on proxies for geography where appropriate.[24] Given ongoing disputes in the industry regarding the geographic end points of various classes of traffic (*e.g.*, VoIP, CMRS), the increasing difficulty of identifying such end points, and the need to resolve these disputes in order to accomplish the broader objectives of the Plan, the Commission is fully authorized to adopt a numbers-based proxy for all traffic.

3. Rules Requiring All Carriers to Negotiate Interconnection Agreements

The Commission has clear jurisdiction to enforce the Missoula Plan's provisions requiring all carriers to negotiate interconnection agreements under § 252. Although § 252 imposes explicit negotiation duties only on ILECs and does not by its terms impose any direct obligation on CLECs to submit to negotiation requests from ILECs, nothing in § 252 reflects an

[22] *See also* Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service, *Memorandum Opinion and Order*, 4 FCC Rcd. 8448 ¶¶ 2, 10-13 (rel. Dec. 5,1989) (establishing rules for determining the jurisdiction of Feature Group A and B access traffic and explaining that a consistent jurisdictional allocation of traffic is essential to ensure proper billing and cost separations).

[23] *Cf.* Thrifty Call, Inc., Petition for Declaratory Ruling Concerning BellSouth Telecommunications, Inc., *Declaratory Ruling*, 19 FCC Rcd. 22240 ¶¶ 5-11 (rel. Nov. 12, 2004) (basing the application of access charges on Commission-defined percentage of interstate use ("PIU") factors).

[24] *See, e.g.*, First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, 16017-18 ¶ 1044 (1996) ("*Local Competition Order*") (using proxies for the geographic location of a caller with respect to wireless traffic).

affirmative policy judgment to insulate CLECs—or any other carriers—from such duties. To the contrary, §§ 251 and 252 demonstrate that one of Congress's clear purposes in enacting the 1996 Act was to impose two-sided negotiation and arbitration obligations on both ILECs and CLECs. Indeed, in the *T-Mobile Order*, the Commission found that "negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act."[25]

That finding is undoubtedly correct. Section 251(a)(1) requires all carriers to interconnect with other telecommunications carriers, and §§ 251 and 252 manifest a congressional judgment in favor of good faith negotiations generally. Section 251(c)(1) provides that all "requesting telecommunications carrier[s]"—in the context of the § 251/252 process, typically CLECs—"ha[ve] the duty to negotiate in good faith,"[26] at least once a negotiation has been commenced. Section 252(b)(5) likewise provides that the refusal of any party to negotiate shall be considered a failure to negotiate in good faith. And nothing in the *T-Mobile Order* or the Act justifies limiting the Commission's authority to impose § 252 negotiation obligations on wireless carriers only (as opposed to other non-ILECs). Rather, the Commission has full authority under §§ 201 and 251 and the principles of *Iowa Utilities Board*—*i.e.*, that the Commission has rulemaking authority to implement all provisions of the Act—to require all carriers to negotiate interconnection agreements, particularly when those agreements are critical to effectuation of the Commission's substantive rules regarding intercarrier compensation. In light of this authority, and in the absence of any indication in the Act or in the Commission's rules that the duty to negotiate should fall disproportionately on ILECs, it would be unreasonable to conclude that only ILECs may be required to enter into good faith negotiations for interconnection with another carrier.

[25] Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, *Declaratory Ruling and Report and Order*, 20 FCC Rcd. 4855 ¶ 14 (rel. Feb. 24, 2005).

[26] 47 U.S.C. § 251(c)(1).

4. Rules Concerning the Provision and Procurement of Tandem Transit Service

The Missoula Plan provides that all ILECs that are providing tandem transit service prior to adoption of the Plan will be required to continue providing tandem transit service once the Missoula Plan is adopted.[27] The Missoula Plan thus does not create an obligation in the first instance to provide tandem transit service, but it prohibits the discontinuance of such service. The Commission clearly has the authority under §§ 201(a) and 251(a) of the Act to regulate the provision of tandem transit service in this manner.

With respect to the provision of tandem transit service for interstate telecommunications traffic, § 201 plainly allows the Commission to regulate the continued provision of such service and to ensure that charges for tandem transit service are just and reasonable.[28] Indeed, the Commission has for years relied on its § 201 authority to require that LECs provide transit for traffic between an IXC and independent LECs, CMRS carriers, and others.[29] With respect to all other traffic, § 251(a), which requires all telecommunications carriers to "interconnect directly or indirectly" with all other telecommunications carrier networks, allows the Commission to regulate the continued provision of tandem transit service, including the provision of such service for intrastate traffic. In the *Local Competition Order*, the Commission held that the interconnection requirement in § 251(a)(1) "is central to the 1996 Act and achieves important

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[27] Tandem transit service is defined in the Missoula Plan as a "switched transport service provided by a third-party carrier using its tandem switch to effectuate indirect interconnection between two carriers within a LATA (or in Alaska, within a local calling area)." *See* § III.D.1.a.i. of the Missoula Plan.

[28] 47 U.S.C. § 201(a) (authorizing the Commission to require "through routes" between and among carriers for the transmission of traffic); 47 U.S.C. § 201(b) (requiring rates and practices to be just and reasonable).

[29] *See, e.g.*, Elkhart Tel. Co. v. SWBT, *Memorandum Opinion and Order*, 11 FCC Rcd. 1051, File No. E-93-95 (rel. Nov. 13, 1995)1051, 1056-57 ¶¶ 34, 37 (1995); *see also* MTS and WATS Market Structure Policies and Requirements (Phase III), *Report and Order*, 100 F.C.C.2d 860, CC Docket No. 78-72 (rel. March 19,1985).

policy objectives."[30] Tandem transit service is the essential link that enables carriers to interconnect indirectly. That statutory objective would be frustrated if the Commission were powerless to regulate a carrier's continued provision of the transit link needed to interconnect two carriers indirectly.

5. Rules Setting Intercarrier Payment Rates for Track 1 and Track 2 Carriers

The Commission has full authority to implement the Plan's provisions setting intercarrier payment rates for carriers in Tracks 1 and 2. As set forth in greater detail in the *Missoula Plan Legal Discussion,*[31] the Commission has direct jurisdiction under §§ 201 and 251(b)(5) to reach all classes of intercarrier compensation within Tracks 1 and 2. In addition, the "impossibility" doctrine of *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986), independently permits the Commission to regulate intercarrier compensation for *all* classes of traffic to effectuate its responsibilities under §§201 and 251.[32] Moreover, in order to remove any potential obstacle to the establishment of rates for Track 1 and Track 2 carriers, the Commission can and should forbear from the application of §§ 252(c) and 252(d)(2).[33]

[30] *Local Competition Order* ¶ 997. *See also* Access Charge Reform, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd. 9923, CC Docket No. 96-262 ¶ 93 (rel. April 27, 2001)("universal connectivity is an important policy goal that our rules should continue to promote")("CLEC Access Charge Order"); Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, *Memorandum Opinion and Order*, 17 FCC Rcd. 27,039 CC Docket No. ¶ 118 (rel. July 17, 2002)(transit service is critical to the ability of carriers to interconnect indirectly)("*Virginia Arbitration Order*").

[31] *Missoula Plan Legal Discussion*, Attachment A.

[32] *Id.*

[33] *Id.*

B. The Commission Has Authority to Adopt the Voluntary Provisions of the Missoula Plan

To encourage full state participation in *all* aspects of the Plan, including the voluntary ones,[34] the Plan conditions payments from the Early Adopter Fund and the application of the Restructure Mechanism to Track 3 carriers on a state's compliance with the Plan's rate rebalancing provisions.[35] Consumers in a state that complies with the Plan will thus enjoy lower intrastate charges, and the only increases those consumers will see is the higher federal Subscriber Line Charge. As a practical matter, this incentive will likely lead most states to adopt the Plan's terms, even in the absence of direct compulsion.

As set forth in the *Missoula Plan Legal Discussion*,[36] providing these incentives to the states is perfectly consistent with the principle of dual jurisdiction. The federal government has broad authority to condition the extension of federal support on a state's adherence to the terms of a federal program.[37] This principle applies as well to the Commission's relationship with the states under § 254.[38] The Commission thus has full authority to adopt the voluntary provisions of the Plan.

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[34] As used herein and in the Missoula Plan documentation, the term "voluntary" means voluntary *for the states*, not for carriers. Once a state has enacted those provisions, they will be mandatory for the affected carriers.

[35] Track 1 and Track 2 carrier eligibility for Restructure Mechanism payments is not dependent on a state's adoption of the Plan.

[36] *Missoula Plan Legal Discussion* at 7-8.

[37] *See generally South Dakota v. Dole*, 483 U.S. 203 (1987).

[38] *See Qwest Corp. v. FCC*, 258 F.3d 1191, 1203-04 (10th Cir. 2001) (holding that the FCC has not just the authority but the *obligation* to give the states "carrot and stick" inducements to ensure their compliance with federal universal service goals); *Texas Office of Public Util. Counsel v. FCC*, 183 F.3d 393, 444 (5th Cir. 1999) ("*TOPUC I*") (holding that the Commission may place conditions on the states' receipt of federal universal service funding).

CONCLUSION

It is time for the Commission to repair the broken system of intercarrier compensation in this country. In order to do so, the Commission should adopt the Missoula Plan, in full, without delay. No other proposal before the Commission is as comprehensive as the Missoula Plan. No other proposal has as broad a base of support as the Missoula Plan. No other proposal will resolve as wide a spectrum of intercarrier payment and interconnection issues as the Missoula Plan. Most importantly, no other proposal will benefit the public generally and consumers in particular as much as the Missoula Plan.

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ATTACHMENT A

ATTACHMENT A

CLARIFICATIONS AND REVISIONS TO THE MISSOULA PLAN

The supporters of the Missoula Plan are making the following changes to the Plan as a result of discussions with the industry and with state commissions and their staffs, to broaden support for the Plan and to clarify and simplify the Plan. The Missoula Plan will be formally amended to incorporate these changes.

1. The definition of CRTC (§ II.A.1.a of the Plan) is eliminated. The remaining subsections of § II.A.1., as well as all additional provisions of the Plan that refer to CRTCs, will be revised consistent with the changes to the definitions of Tracks 1, 2, and 3, below.

2. In § II.A.1.c, the *General Rule* paragraph is revised so that it reads:

   Track 2 and 3 carriers will be permitted to acquire exchanges from other carriers (and acquire other carriers *in toto*), and, as current rules allow, include those exchanges as part of their study areas if the agreement in principle (or similar document) to acquire such exchange(s) or carrier(s) was signed on or before August 1, 2006. For acquisitions executed subsequent to August 1, 2006, the acquired exchange(s) or carrier(s) will be treated as provided for in the Plan, but such acquisitions will not affect the designation of the acquiring company as a Track 2 or Track 3 carrier for the study areas in which the acquiring company originally qualified as a Track 2 or Track 3 carrier.

3. The definition of Track 1 carrier (§ II.A.2 of the Plan) is revised such that a carrier is a Track 1 carrier:

   a) if the carrier is an ILEC[1] owned by a BOC or its affiliate;

   b) in a particular study area, if, in that study area, as of August 1, 2006: (1) the carrier was an ILEC, (2) it served more than 600,000 loops, (3) it did not meet the definition of a "Rural Telephone Company" in section 3(37) of the Communications Act (47 U.S.C. § 153(37)), and (4) it was not owned by a BOC or its affiliate; or

   c) the carrier is any carrier other than an ILEC.

[1] The term "ILEC" shall mean (1) any carrier that meets the requirements of § 251(h) of the Act, or (2) any LEC that the Commission has allowed to participate in any NECA pool, that is not a BOC or its affiliate, that meets the definition of a "Rural Telephone Company" in section 3(37) of the Communications Act (47 U.S.C. § 153(37)), and that serves no more than 600,000 loops in its study area.

4. The definition of Track 2 carrier (§ II.A.3 of the Plan) is revised such that a carrier is a Track 2 carrier in a particular study area if, in that study area:

   a) as of August 1, 2006: (1) the carrier was an ILEC, (2) it met the definition of a "Rural Telephone Company" in section 3(37) of the Communications Act (47 U.S.C. § 153(37)), (3) it operated under interstate price cap regulation, and (4) it was not owned by a BOC or its affiliate; or

   b) as of August 1, 2006: (1) the carrier was an ILEC, (2) it served no more than 600,000 loops, (3) it did not meet the definition of a "Rural Telephone Company" in section 3(37) of the Communications Act (47 U.S.C. § 153(37)), and (4) it was not owned by a BOC or its affiliate.

5. The definition of Track 3 carrier is revised such that a carrier is a Track 3 carrier in a particular study area if, in that study area, as of August 1, 2006: (1) the carrier was an ILEC, (2) it met the definition of a "Rural Telephone Company" in section 3(37) of the Communications Act (47 U.S.C. § 153(37)), (4) it operated under interstate rate of return regulation, and (4) it was not owned by a BOC or its affiliate.

6. § II.B.3.a.i. of the Plan is revised to add the following phrase in the middle of the second sentence:

   including the effect, if any, of adopting the interstate rate structure at Step 1,

   So that the entire sentence reads:

   "All interstate access charges (both originating and terminating), including the effect, if any, of adopting the interstate rate structure at Step 1, will be reduced by 25 percent of the difference between those charges at the start of the plan and the corresponding interstate charges.

7. § II.B.3.B.i. of the Plan is revised to add a footnote at the end of the sentence, and to add the following in the text of the footnote:

   All non-access traffic is billed under the Plan pursuant to reciprocal compensation agreements - not under interstate or intrastate access tariffs. As defined under the Plan, Track 3 companies would bill for transport and termination of non-access traffic based on negotiated intercarrier compensation agreements, or, where no agreements exist, under the Plan's interim methodology, with rates capped at the level of the Track 3 company's applicable interstate access rates.

   The Track 3 interim reciprocal compensation rate structure for non-access traffic would involve the development of two rate elements (termination and common transport). This assumes dedicated transport to the terminating ILEC would be flat rated at the ILEC's interstate access rates for the applicable dedicated transport elements that would otherwise apply, *i.e.*, without any simplification of the rate structure. Both the termination and common transport rate elements would apply per minute of use and if the Track 3 carrier is a NECA pool member, would be rate banded.

Assuming a July, 2007 implementation date, the termination rate element would be developed as the sum of the company's applicable interstate access Local Switching rate and 1/100 of the Information Surcharge rate for the 2007-2008 test period. The common transport rate element would be developed following an analysis of 2006 calendar year's actual revenues for the Tandem Switching, Tandem Switched Terminations and Tandem Switched Facility normalized to reflect rates changes as of July, 2007 divided by the 2006 calendar year minutes.

For NECA pool members, NECA would develop and post such rates on a public website, along with applicable terms and conditions, to facilitate member implementation. The NECA public website would include general interconnection terms and conditions associated with the application of the reciprocal compensation rates and one or more sets of simplified rate structures (combinations of transport and termination charges reflecting existing reciprocal compensation agreements) that carriers can use when applying the interim reciprocal compensation process or may reference in their interconnection agreements. NECA would continually update the rates to match the NECA tariff rates by rate band.

8. § II.C. of the Plan, in the *Summary* paragraph, is revised to add a footnote at the end of the sentence: "SLC increases will operate in tandem with the other recovery mechanisms discussed below in Section VI," and to add the following in the text of the footnote:

   The Missoula Plan recovers revenues lost as a result of reductions of intrastate access charges from a Federal SLC cap increase and a Federal Restructure Mechanism. For Rate of Return ("ROR") carriers, under the Plan, revenues that were included in the intrastate jurisdiction will be moved to the interstate jurisdiction. However, the costs that these revenues recover remain in the intrastate jurisdiction. As a consequence, there will be a revenue cost mismatch (revenues in interstate while the costs are intrastate). To ensure proper matching of jurisdictional revenues and costs, a procedure will be developed and filed on or before December 11, 2006 that will move an appropriate level of Restructure Mechanism and SLC revenues to the intrastate jurisdiction. Alternatively, an appropriate level of costs (without changes to existing Part 36 categories and factors) may be moved to the interstate jurisdiction.

9. § III.B.2.d.iv of the Plan is revised to add a footnote at the end of the sentence, and to add the following in the text of the footnote:

   However, the CMRS carrier must still designate at least one Edge in each LATA in which it receives traffic from other carriers, as required by section III.B.2.a, above.

10. The Plan will be modified to acknowledge that Track 2 carriers may argue that their Tandem Transit Service rate they charge should be greater than the rate set forth in the Plan at § III.D.4 of $0.0025 per MOU.

11. § VI.A.1.e.i of the Plan, the first sentence is revised to add a footnote after the phrase, "that the carrier has under the existing system" and to add the following in the text of the footnote:

    Such revenues shall include any intrastate revenues recovered from an intrastate access/CCL/HCF pool that are recovered from interexchange carriers. At step 0 of the Plan, a Track 3 carrier will include with its intrastate switched access revenues its revenue draw from such a pool.

12. § VI.A.1.e.i of the Plan, is revised to add a footnote at the end of the second sentence and to add the following in the text of the footnote:

    Additional costs caused by the Plan, such as charges for records, trunk group costs, etc., resulting from implementation of the Phantom Traffic proposal are also recoverable from the Restructure Mechanism.

13. § VI.A.1.e.ii.2) of the Plan is revised to add the term "per-line" to the last sentence, so that the end of the sentence reads, ". . . or the carrier's base factor portion of the per-month, per-line, common line revenue requirement."

14. § VI.A.1.e.iii.2) of the Plan is revise to add the term "per-line" to the last sentence, so that the end of the sentence reads, ". . . or the carrier's base factor portion of the per-month, per-line, common line revenue requirement."

15. § VI.C.1 of the Plan is revised to add to the first sentence the phrase "and non-rural," so that the sentence reads, "The rural High-Cost-Loop Fund ("HCLF") will be re-indexed based on the current nationwide average cost per loop for rural and non-rural telephone companies."

16. The Plan will be modified to allow a Track 2 carrier, prior to Step 3, to increase its rates for interstate dedicated switched transport by up to 50% of any percentage increase to interstate tandem switching/common transport rates that occurs. Beginning at Step 3, this same flexibility will be available to allow a Track 2 carrier to increase its terminating dedicated transport rates if it increases its terminating tandem switching/common transport rates. The inverse would be required, *i.e.*, interstate dedicated switched transport rates would decrease, if interstate tandem switching/common transport rates decrease. For example, if a Track 2 carrier's interstate tandem switching/common transport rates increase by approximately 20%, the Track 2 carrier would be permitted to increase its

interstate dedicated switched transport rates by 50% of that amount, which would be 10%.

ATTACHMENT B

ATTACHMENT B

THE RESTRUCTURE MECHANISM RECOVERS REVENUES FOR INTERCONNECTION. THE RESTRUCTURE MECHANISM IS NOT USF. IT SHOULD BE ESTABLISHED UNDER SECTIONS 201 AND 205 OF THE ACT.

The Rural Alliance and some other proponents of the Plan maintain that access charges are not a source of universal service support. Accordingly, the mechanism established to offset revenue loss from reduced access charge levels should not be considered universal service funding. The existing access charge structure is an integral part of the rate design utilized to recover revenues for interconnection in both the federal and State jurisdictions. Therefore, the rural carriers, together with other proponents of the Plan, maintain that the Restructure Mechanism should be established as a new access charge element under Sections 201 and 205.

Section 201 of the Act provides the Commission with its fundamental authority over the interconnection of carriers by giving the Commission the power "to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes." 47 U.S.C. § 201(a). Pursuant to Section 205, the Commission has the authority "to determine and prescribe what will be the just and reasonable charge" for the interconnection services it requires pursuant to Section 201. 47 U.S.C. § 205(a).

A fundamental principle of the Commission's interconnection policies has been recognition of the fact that connectivity to the nationwide switched telephone network benefits all who can reach and be reached. This principle provides the foundation of the existing and prior intercarrier compensation structures that have inherently and purposefully recognized the need for rate design structures that will foster the provision of universal and advanced services in rural areas.

The application of this principle in the context of the establishment of interconnection charges pursuant to Sections 201 and 205 resulted in the establishment of pooled access and end-user charges utilized to collect revenues for interconnection to all carriers. *See, e.g.*, Third Report and Order, *MTS and WATS Market Structure*, 93 F.C.C.2d 241, ¶¶ 42 *et seq.* (1983) ("*Third Report and Order*").

In the same decision in which the Commission established the initial access structure that combined both carrier charges and end-user charges, it reflected its now long-standing principle with respect to the rate design to recover interconnection revenues: "If instead all end users are expected to bear the costs of all plant in their exchange area used to provide access service to interstate carriers, whether the resulting charge is flat, usage sensitive or a combination of both, almost certainly that approach will result in costs being recovered from customers who have not caused the exchange carrier to incur those costs. In particular, end users will be subsidizing the use of their local facilities by those terminating calls in their exchange area. Such an unfair result cannot be in the public interest." *Third Report and Order* ¶ 209.

Like the initial pooled access and end-user charges, the Restructure Mechanism may be established as an access element pursuant to the Commission's authority under Sections 201 and 205, and consistent with the Commission's long-established policy regarding interconnection rate design. The revenues collected from the assessment of the charge may be collected and distributed as recommended by the Plan pursuant to the Commission's authority under Sections 201 and 205, and consistent with the manner in which the Commission has previously required the collection and distribution of charges through the National Exchange Carrier's Association.

Under a Restructure Mechanism established pursuant to Sections 201 and 205, the Commission will establish a rule under Part 69 that will prescribe the assessment, collection, and distribution of the Restructure Mechanism consistent with the Plan. The Commission will then, in accordance with its authority under Sections 201 and 205, require distribution of the revenues to exchange carriers to offset the reductions to existing access rates, consistent with both the distribution mechanism and the authority pursuant to which the Commission has previously required the administration of pooled access charge revenues. Accordingly, the receipt of revenues from the Restructure Mechanism is not universal service funding and not subject to portability.

The Plan proponents that advocate the establishment of the Restructure Mechanism under Sections 201 and 205 also support the implementation of the Plan through a collaborative process between federal and State regulators. With the agreement of a State regulatory authority to expeditiously establish intrastate access rates in a manner consistent with that set forth in the Plan, the Restructure Mechanism will provide carriers with a new source of interstate revenues that offsets reductions in intrastate access rates. The implementation of the Plan in this manner maintains the rights and responsibilities of State regulators to ensure that the objectives of universal service are met, and does not impede the rights of State regulators pursuant to their individual State statutes to oversee the rates and quality of intrastate services provided to consumers.

ATTACHMENT C

ATTACHMENT C

THE COMMISSION HAS AUTHORITY UNDER § 254 TO ESTABLISH THE MISSOULA PLAN'S RESTRUCTURE MECHANISM TO REPLACE AMOUNTS THAT CARRIERS WILL LOSE THROUGH REDUCTIONS IN ACCESS CHARGES.

Some supporters of the Missoula Plan maintain that § 254 of the Act provides the Commission authority to establish the Restructure Mechanism in the Missoula Plan. Section 254 gives the Commission jurisdiction to take whatever steps are necessary to ensure that federal *and* state universal service support mechanisms meet the goals of the Act. Because continued reliance on the implicit subsidies in access charges is inconsistent with the Act, § 254 entitles the Commission to replace those implicit subsidies with explicit universal service support.

Access charges clearly are a source of universal service support. Although access charges in part recover the costs of providing access, they also are one of the central implicit measures on which states rely to keep local end-user rates low. Access charges, however, do not meet the Act's requirements for universal service support mechanisms, because the subsidies they contain are neither explicit nor sustainable.[1] Moreover, reliance on access charges to support universal service is inconsistent with § 254(b)(4)'s mandate that carriers make "equitable and nondiscriminatory contribution[s]" to universal service. The use of access charges to support universal service also violates § 254(b)(5)'s requirement that universal service mechanisms be "specific, predictable, and sufficient." Removing implicit subsidies from access charges is thus well within the Commission's charge under § 254.

[1] *See, e.g.*, Federal-State Board on Universal Service, *Comments of AT&T Inc.*, CC Docket No. 96-45 (March 27, 2006).

The Restructure Mechanism is just another aspect of federal universal service, like the high cost support mechanism, that the Commission may establish pursuant to its general universal service authority. Section 254(a) gives the Commission broad rulemaking authority to adopt rules to implement §§ 254, "including the definition of the services that are supported by Federal universal service support mechanisms."[2] This includes not only authority to reform interstate implicit subsidy mechanisms, but intrastate ones as well. Indeed, the *Qwest* decision held that the Commission has an *obligation* to enact measures to drive the states to comply with the universal service goals in the Act.[3] Moreover, in its CALLS and MAG orders, the Commission established explicit universal service mechanisms to replace implicit subsidies previously recovered through access charges.[4] It thus should be well-settled and non-controversial that the Commission's authority to establish the Restructure Mechanism is well within its authority under § 254. In fact, it would be arbitrary and capricious to hold otherwise.[5]

The Commission also has authority under § 254(a), as well as § 214(e), to establish rules and procedures for the disbursement of funds from the Restructure

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[2] 47 U.S.C. § 254(a). Moreover, The Supreme Court has made clear that the Commission has broad authority to adopt rules implementing all the provisions of the Act. *Iowa Utils. Bd.*, 525 U.S. at 377-86.

[3] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203-04 (10th Cir. 2001).

[4] Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Second Report and Further Notice of Proposed Rulemaking*, 16 FCC Rcd. 19613, CC Docket No. 00-256 (rel. Nov. 8, 2001); Access Charge Reform, *Sixth Report and Order*, 15 FCC Rcd. 12962, CC Docket No. 96-262 (rel. May 31, 2000).

[5] And the Commission has long provided federal funds in many situations to cover at least a portion of costs on the intrastate side of the ledger. *See* Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd. 8776, CC Docket No. 96-45 ¶ 56 (rel. May 8, 1997) (including intrastate services among those services supported by federal universal service mechanisms); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 444 (5th Cir. 1999) (recognizing that the Commission provides federal universal service funds to support intrastate rate discounts to schools and libraries).

Mechanism. Because the Restructure Mechanism is a component of federal universal service, only eligible telecommunications carriers ("ETCs")—as designated by a state pursuant to § 214(e)—may receive Restructure Mechanism funds. Such rules should provide that Track 1, 2, and 3 wireline ETCs, and Track 1 wireless ETCs receive Restructure Mechanism disbursements, and that Track 2 and 3 wireless ETCs are ineligible to receive Restructure Mechanism disbursements. In addition, Track 1, 2, and 3 ETCs competing against price cap ILECs should be eligible to receive Restructure Mechanism disbursements equivalent to the amounts received by such price cap ILECs. Carriers competing against rate of return ILECs should receive Restructure Mechanism disbursements equivalent to the amount provided to those ILECs, but the amounts of such disbursements should not include amounts attributable to ILEC line loss.